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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

13 **RICKY DEL ROSARIO**  
46479 Lianne Court  
14 Temecula, CA 92592

15  
16 Respondent.

Case No. *2011-587*

**STATEMENT OF ISSUES**

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
21 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about July 1, 2010, the Board of Registered Nursing, Department of Consumer  
24 Affairs received an application for a Registered Nurse License from Ricky Del Rosario  
25 (Respondent). On or about June 28, 2010, Ricky Emmanuel Del Rosario certified under penalty  
26 of perjury to the truthfulness of all statements, answers, and representations in the application.  
27 The Board denied the application on September 29, 2010.

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1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board of Registered Nursing (Board),  
3 Department of Consumer Affairs, under the authority of the following laws. All section  
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 2736 of the Business and Professions Code (Code) provides, in pertinent part,  
6 that the Board of Registered Nursing (Board) may deny a license when it finds that the applicant  
7 has committed any acts constituting grounds for denial of licensure under section 480 of that  
8 Code.

9 **STATUTORY PROVISIONS**

10 5. Section 480 of the Code states:

11 "(a) A board may deny a license regulated by this code on the grounds that the applicant  
12 has one of the following:

13 . . . .

14 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,  
15 would be grounds for suspension or revocation of license.

16 "(B) The board may deny a license pursuant to this subdivision only if the crime or act is  
17 substantially related to the qualifications, functions, or duties of the business or profession for  
18 which application is made.

19 "..."

20 6. Section 492 of the Code states:

21 "Notwithstanding any other provision of law, successful completion of any diversion  
22 program under the Penal Code, . . . shall not prohibit any agency established under Division 2  
23 (commencing with Section 500) of this code, or any initiative act referred to in that division, from  
24 taking disciplinary action against a licensee or from denying a license for professional  
25 misconduct, notwithstanding that evidence of that misconduct may be recorded in a record  
26 pertaining to an arrest.

27 "..."

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1       7.     Section 2761 of the Code states:

2       "The board may take disciplinary action against a certified or licensed nurse or deny an  
3 application for a certificate or license for any of the following:

4       "(a) Unprofessional conduct, which includes, but is not limited to, the following:

5       ....

6       "(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action  
7 against a health care professional license or certificate by another state or territory of the United  
8 States, by any other government agency, or by another California health care professional  
9 licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that  
10 action.

11       "...."

12       8.     Section 2762 of the Code states:

13  
14       In addition to other acts constituting unprofessional conduct within the  
15 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for  
16 a person licensed under this chapter to do any of the following:

17       (a) Obtain or possess in violation of law, or prescribe, or except as directed  
18 by a licensed physician and surgeon, dentist, or podiatrist administer to himself or  
19 herself, or furnish or administer to another, any controlled substance as defined in  
20 Division 10 (commencing with Section 11000) of the Health and Safety Code or  
21 any dangerous drug or dangerous device as defined in Section 4022.

22       (b) Use any controlled substance as defined in Division 10 (commencing  
23 with Section 11000) of the Health and Safety Code, or any dangerous drug or  
24 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent  
25 or in a manner dangerous or injurious to himself or herself, any other person, or  
26 the public or to the extent that such use impairs his or her ability to conduct with  
27 safety to the public the practice authorized by his or her license.

28       ....

### 29                               REGULATORY PROVISIONS

30       9.     California Code of Regulations, title 16, section 1444, states:

31  
32       A conviction or act shall be considered to be substantially related to the  
33 qualifications, functions or duties of a registered nurse if to a substantial degree it  
34 evidences the present or potential unfitness of a registered nurse to practice in a  
35 manner consistent with the public health, safety, or welfare. Such convictions or  
36 acts shall include but not be limited to the following:

37       (a) Assaultive or abusive conduct including, but not limited to, those  
38 violations listed in subdivision (d) of Penal Code Section 11160.

      (b) Failure to comply with any mandatory reporting requirements.

- (c) Theft, dishonesty, fraud, or deceit.  
(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

10. California Code of Regulations, title 16, section 1445, states, in pertinent part:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

....

### DRUGS

11. Methamphetamine is classified as a controlled substance under the California Health & Safety Code and/or Federal Law: Methamphetamine is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(d)(2).

Cannabis is a Schedule I controlled substance as designated by Health and Safety Code section 11357 (b).

### FACTS

12. On or about March 26, 2008, deputies for the Riverside County Sheriff's Department pulled over a vehicle driven by Respondent. The license tags on the vehicle were expired. The deputies found that Respondent's driver's license was suspended. After one of the deputies noticed the odor of marijuana they asked for and were given permission to search the vehicle. The search turned up methamphetamine, marijuana and a glass pipe. Respondent was arrested and charged with possession of methamphetamine, marijuana, drug paraphernalia, and driving with a suspended license.

13. On or about May 1, 2008, in a criminal proceeding entitled People of the State of California v. Ricky Emmanuel Del Rosario, in Riverside County Superior Court, case number

1 SWF 025261, Respondent pled guilty to a violation of Health and Safety Code section 11377 (a),  
2 possession of a controlled substance, methamphetamine. In consideration of this plea the  
3 remaining charges were dismissed. The dismissed charges were for violations of Health and  
4 Safety Code section 11379 (a), a felony, transportation, sale or furnishing a controlled substance;  
5 Health and Safety Code section 11364, a misdemeanor, possession of drug paraphernalia; and  
6 Vehicle Code section 23222 (b), a misdemeanor, possession of not more than 28.5 grams of  
7 marijuana while driving a motor vehicle.

8 14. On or about May 1, 2008, Respondent was sentenced to thirty days in the county jail  
9 (with credit for two days served), to be served on weekends, three years summary probation, and  
10 payment of fees and fines, but entry of judgment was deferred until a sentencing or dismissal  
11 hearing on November 2, 2009. Respondent was ordered to enroll in and complete a drug  
12 diversion program under Penal Code section 1000. When Respondent failed to comply with the  
13 terms related to his diversion program another hearing was held on October 6, 2008. At that  
14 hearing Respondent was ordered to continue in the diversion program, but the sentencing or  
15 dismissal hearing was moved back to February 8, 2010. On February 8, 2010, the criminal  
16 charge was dismissed upon Respondent's successful completion of the diversion program.

17 15. At the time of the actions described in paragraphs 12-14 above, Respondent  
18 was a licensed vocational nurse, License No. VN 215430. The Board of Vocational  
19 Nursing & Psychiatric Technicians brought Accusation No. VN-2007-2250 against  
20 Respondent for those actions.

21 16. A hearing was held on that Accusation on March 10, 2010. The proposed  
22 Decision following that hearing was adopted by the Board on May 24, 2010, effective on  
23 June 23, 2010.

24 17. An Order was issued revoking Respondent's vocational nurse license, with the  
25 revocation stayed and Respondent placed on two years of probation with various terms  
26 and conditions.

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Unprofessional Conduct-Disciplinary Action by Another Board)**

3 18. Grounds exist to deny the application of Respondent under sections 480 (a)(3), in  
4 conjunction with 2761 (a)(4) of the Code, in that Respondent was disciplined by the Board of  
5 Vocational Nursing & Psychiatric Technicians for his conduct as more fully described in  
6 paragraphs 12 – 17, above.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(Unprofessional Conduct-Possession of Controlled Substances)**

9 19. Grounds exist to deny the application of Respondent under sections 480 (a)(3), in  
10 conjunction with 2762 (a) and (b) of the Code, in that Respondent possessed controlled  
11 substances, methamphetamine and marijuana, as more fully described in paragraphs 12 – 14  
12 above. These acts are substantially related to the qualifications, duties and functions of a licensed  
13 registered nurse.

14 **OTHER MATTERS**

15 20. On or about July 21, 2004, in Case number RIM 457019, Respondent received a  
16 misdemeanor traffic citation for a violation of California Vehicle Code section 14601.1 (a),  
17 driving on a suspended license, and California Vehicle Code section 22350, speeding.

18 21. On or about October 2, 2005, in Case number SWM 043376, Respondent received a  
19 misdemeanor traffic citation for a violation of California Vehicle Code section 14601.1 (a),  
20 driving on a suspended license, and California Vehicle Code section 22349(a), excessive speed.  
21 On December 13, 2005 an additional charge was filed for a violation of California Vehicle Code  
22 section 40508 (a), failure to appear at the arraignment.

23 22. On or about August 27, 2006, in Case number SWM 053576, Respondent received a  
24 misdemeanor traffic citation for a violation of California Vehicle Code section 14601.1 (a),  
25 driving on a suspended license, and California Vehicle Code section 22349(a), excessive speed.

26 On October 20, 2006 an additional charge was filed for a violation of California Vehicle Code  
27 section 40508 (a), failure to appear at the arraignment.

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23. On or about December 23, 2006, in Case number SWM 058724, Respondent received a misdemeanor traffic citation for a violation of California Vehicle Code section 14601.1 (a), driving on a suspended license. On February 5, 2007 an additional charge was filed for a violation of California Vehicle Code section 40508 (a), failure to appear at the arraignment.

24. On May 1, 2008, Respondent entered guilty pleas to each of the 14601.1 (a) violations listed in paragraphs 20 through 23, above. These pleas were entered at the same hearing in which Respondent pled guilty to a violation of Health and Safety Code section 11377 (a), possession of a controlled substance, methamphetamine, as outlined in paragraph 13, above. For the Vehicle Code violations, Respondent was sentenced to thirty days in the county jail (with credit for two days served) to run concurrently, and to be served on weekends, three years summary probation, and payment of fees and fines. Respondent was scheduled to begin serving his jail time beginning on July 16, 2008, but failed to appear.

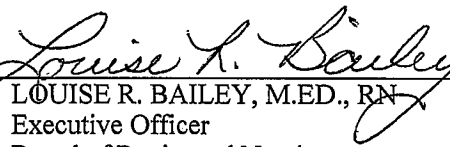
25. Pursuant to California Code of Regulations, title 16, section 1445, the violations listed in paragraphs 20 through 23, above, should be considered in the denial of the application for a registered nurse license to Ricky Emmanuel Del Rosario.

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Ricky Del Rosario for a Registered Nurse License;
2. Taking such other and further action as deemed necessary and proper.

DATED: 1-4-11

  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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